

## SPECIAL COUNCIL MEETING

APRIL 4, 2012

The Special Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, April 4, 2012 at 8:38 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable KipuKai Kuali'i  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

### APPROVAL OF AGENDA.

Mr. Kuali'i moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

### COMMUNICATIONS:

C 2012-101 Communication (03/29/2012) from the Prosecuting Attorney, requesting authorization to expend funds up to \$10,000.00 to retain special counsel to represent the Office of the Prosecuting Attorney before the Civil Service Commission, relating to the classification of position no. 2801 and related matters: Mr. Rapozo moved to approve C 2012-101, seconded by Mr. Kuali'i.

Chair Furfaro: Moved and seconded. I would like to share with you folks that after yesterday's session and again this morning I have had meetings. There was a posting on this requisition number 111200269 and it was posted at 4:28 p.m. last night for the position in question, and it has been transmitted to Jaime Chong at 4:29 p.m. I guess in the evening, it has been posted by the Human Relations Department as a vacant position, and it has been approved by Malcolm, and therefore it would probably be at this particular time appropriate for us to receive this item rather than move to identify \$10,000.00 for legal counsel.

Mr. Kuali'i: I withdraw my second.

Chair Furfaro: Prosecutor.

There being no objections, the rules were suspended.

SHAYLENE ISERI-CARVALHO, PROSECUTING ATTORNEY: I did have an opportunity to review the posting. I did make phone calls this morning, actually it appears that they were attempting to try to divert the intentions of what the Prosecuting Attorney's Office had intended to do. While this was posted, in theory, no one can apply for this position and that was verified by Ms. Erin Doo this morning. So I do not know what the County Attorney's Office is doing. She told me that they received word that to post it; she does not have all of the information she needs. I said at what type of description will this person be required to do, because we had requested that the position that be posted be of the same job description as

that occupied by Cyndie Johnson as that stated in the findings of fact and conclusions of law of the Attorney General, that is not the case.

Chair Furfaro: My discussion with them has been as follows and this is something I know a little bit about as a senior manager for thirty-eight (38) years. I asked the question are we posting an SR-24, the response is yes. I am saying what are you missing to make that happen today, they said they only need to meet with your office to certify the job scope, quote, that is the information I have - I only need to meet with your office to certify the job scope.

Ms. Iseri-Carvalho: Then I want the County Attorney's Office as well as the Personnel Department to be present because that is not the information that I have received, and that came specifically by the person who created this neo.gov position. So I spoke specifically with Erin Doo.

Chair Furfaro: May I ask that you and your department and I will repost this again a week from now. To the Prosecutor's Office that is my choice. We are talking about spending \$10,000.00, I am saying I have done what I can as the Chairman of the Council to get some clarity here. They said to me they are posting an SR-24, they are only waiting for information so that they can certify the job scope, that is fair and reasonable.

Ms. Iseri-Carvalho: May I speak? We have been waiting since December for meetings, we have made numerous phone calls to the Personnel Department, to Malcolm, to the County Attorney's Office, we have wasted thousands and thousands of dollars in taxpayer's money. We have utilized resources from my office, thousands and thousands of dollars, in order to use three (3) other people to suffice to make-up for this position. We have been more than patient in dealing with the County Attorney's Office as well as dealing with the, before Cyndie's job even came up, it was two (2) years before we even got any kind of response. So this is not something that a week, our office had all of this time, we spent all of my time trying to prepare for the budget and do all the forecasting and answer all of the questions of the County Council which normally would be something that Cyndie would do for the first three (3) months. All of these things have put our Office back, and to come in today and to state the County Attorney's Office to come in and state that this job has been posted is right, they posted it but nobody can apply for it, that is a false statement to this County Council. It disgusts me that this kind of things happen because it is a very simple thing. We went through the whole appellate process, we went through hearings, we had a full hearing, they were represented by the County Attorney's Office, the employee was not represented by anyone. We provided testimony, there was an Attorney General that issued Findings of Fact that supported the request that was made by our Office, that was done a long time ago, months and months and months ago.

Chair Furfaro: Shay, I understand your feelings about what has happened, I have similar concerns. If I did not have those concerns, I would not have taken time last night, this morning, to say where are you folks on this particular...you have a Civil Service ruling on this, get the job posted. The posting has been now made, and I asked is the requested position number code by the Prosecutor's Office, yes, so what more do you need? They only need to confirm in scope the certificate of the job to be posted as an SR-24. Okay?

Ms. Iseri-Carvalho: Can I speak? They are adding additional duties to the position which was not initially in the ruling by the Attorney General, that is a totally separate issue.

Chair Furfaro: I agree.

Ms. Iseri-Carvalho: And so, all that needs to be discussed here is whether or not, we already provided the posting that was already done, we have nothing else to discuss. We have provided the job description, that was at a hearing which they came out with Findings and Fact and Conclusions of Law.

Chair Furfaro: And that is the...

Ms. Iseri-Carvalho: And they are differing from the Attorney General's opinion in trying to add new duties to this position, that is not something we will agree with because that would be in opposition to what the Attorney General already ruled.

Chair Furfaro: Okay I understand your concern. If you have provided that information, then I am going to say to you send it to them one (1) more time, confirm with me that communication, and if it is not resolved, we will be back here next week.

Ms. Iseri-Carvalho: Am I here next week Wednesday? What I would like to request of this Council is that you give us an hour where we can go and go talk to Personnel, because every day is a day that imposes additional duties on our Office especially in light of these times that we are going through the Budget. We have been in discussion, that is why I came in early this morning to call Personnel because I saw this posted at 4:29 p.m., and so I immediately came in this morning, I made my phone calls, Ms. Chong was on the phone calling Personnel, I was on the phone calling the Neo.gov people, and that is why we came here at 8:30 a.m.

Chair Furfaro: I think that is a reasonable request. I do not believe that I have ever considered not honoring a reasonable request, and I will put you back on at 11:30 a.m. today. Does that work for you?

Ms. Iseri-Carvalho: That would work for me, immediately after our next item; Infact Jamie is part of the next item too, but I will have my office make contact with Personnel while I am here discussing the second item on the agenda.

Chair Furfaro: Okay. You have all the information that I have discussed with them, it is an SR-24, the item on the agenda indicates the rationale that the Prosecuting Attorney needed related to that classification when I asked the question for the classification. They said they are missing some details from you, but they have posted the job. Now, quite frankly in my opinion as a senior manager that is a little bit about doing it backwards, and I can say that. I am going to recognize other Councilmembers, but I do want to make sure you understand, the agenda item here is to spend \$10,000.00. If it can be resolved which the posting indicates we could, I do not honor some of the delays that they have called for you. This is a relatively new item in the Council agenda, and it is something that I did take forward to them, which I cannot disclose in our discussion with them in Executive Session a week ago, but I think I got my point across. The Prosecutor's

Office is entitled to that posting, the Civil Service Commission made a ruling – post the job. That is where we are at, we can delay this until 11:30 a.m. for you to do a little research. Mr. Rapozo.

Mr. Rapozo: Thank you. Let me just get this straight, and I was not aware of the 4:28 p.m. posting and I would agree with you, after what I just heard, that it was an attempt to basically get this off the agenda, and I am not going to support that; I am not going to withdraw my motion to approve. I am hoping that we take a vote on this. If you do not get this resolved, I am not going to support a one (1) week deferral. I agree with you that this has been going on way too long. My question is, the posting that was supposedly posted at 4:28 p.m. yesterday afternoon is not the posting that you requested?

Ms. Iseri-Carvalho: They posted in theory a position that no one can apply for. There is no job description for the posting that they have.

Mr. Rapozo: So what did they post?

Ms. Iseri-Carvalho: Nothing. They just posted an Administrative Officer at an SR-24 with no job description. So no one could apply.

Chair Furfaro: I am going to make a point with Mr. Rapozo here. You stated what your position is, I am asking for this to be deferred to 11:30 a.m., the Prosecutor's Office has agreed to that, Mr. Rapozo.

Mr. Rapozo: No, I understand, but I need clarification because I do not...

Chair Furfaro: She is going to get clarification and come back to us at 11:30 a.m.

Mr. Rapozo: Can I just ask?

Chair Furfaro: Yes, you still have the floor.

Mr. Rapozo: The position description that is sent over, and I am glad this came up today because we have Personnel here today with reallocations on the agenda, so I have some questions about process, but when you send over a request to post a position it includes your job description?

Ms. Iseri-Carvalho: That is correct.

Mr. Rapozo: And that was not posted?

Ms. Iseri-Carvalho: That was not posted.

Mr. Rapozo: Okay. That is all I need for now.

Chair Furfaro: And that is why I said we are doing this backwards.

Mr. Rapozo: I understand, Mr. Chair. But I guess to my credit I did not have the discussion with the County Attorney, this is the first I have heard, and I think I deserve the answers that I am asking. I think it is incredibly

inefficient what has occurred. I thought we had an agreement that the job was going to be posted. But that is fine, my question has been answered, I will wait until 11:30 a.m., but I will not withdraw my motion to approve I intend to take a vote on this if it is not resolved, and the County Attorneys should know that.

Ms. Iseri-Carvalho:

Mr. Chair?

Chair Furfaro:

Yes? Go right ahead.

Ms. Iseri-Carvalho:

We already provided a position description.

Chair Furfaro:  
with one?

Before you leave today can you provide us

Ms. Iseri-Carvalho:

Yes, I have it here.

Chair Furfaro:

Thank you.

Ms. Iseri-Carvalho: This was what the Civil Service Commission ruled and it has where it was initially a Departmental Staff Assistant SR-20, requested class allocation Administrative Officer SR-24. The request that went over to the County which was initially approved by everyone except the County Attorney's Office stated this job description. They are attempting to amend this job description which we are not in agreement with because it would be again differing from what the Attorney General ruled. We have no authority to do that, the County Attorney's Office or us, we are not an appellate body over the Attorney General in an appellate proceeding that the Civil Service Commission awarded to the person who appealed. So we have the description and that is why it is of confusion to me that they are asking that we need some other things to work out. We are just asking for what we already asked for back in December, which was already ruled upon. Now, Ms. Johnson based upon this job description had received all of the backpay for the two (2) years from December 15, 2009, she received all the backpay based on this job description posted at Administrative Officer SR-24. So the reason for anymore continuance is shocking to me because they have all of the documents. What they attempted to do today was to request that we submit a different job description with additional duties of this Officer, and we will not do that because this is what was ruled upon by the Civil Service Commission.

Chair Furfaro: And I hope you understand, I am not disagreeing with you, do you understand that?

Ms. Iseri-Carvalho:

Yes.

Chair Furfaro: I am not disagreeing with you, they said to me they needed to review "review the certified certification of the job description with the Prosecutor's Office," that is a reasonable request to me. But I am saying as I have said and I will not disclose anymore than that, that I certainly indicated you need to get this job posted and get it resolved "asap," the Civil Service Commission made a ruling, end of story. But, we are going to pursue that at 11:30 a.m.

Ms. Iseri-Carvalho: I just wanted to make sure that our research and our discussions with personnel clearly shows that they are attempting to still divert from the intent, not the intent, from the ruling of the Civil Service Commission because they want to change the job description. Yes they posted and

that is a step in the right direction, but that does not do anything, it is only posted in theory because not a single person can apply for this position. So it is just in theory, it is just to I guess appease the County Council so this Bill does not go through or this funding does not go through. You are right, I wish that they would have done all of this...

Chair Furfaro: Shay, I want to make a, if they are doing something to appease this body, they are making a very bad decision. This is an independent body, you are saying to me that you are going to have some discussion with them, we are going to have you back here at 11:30 a.m., I am going to have my office call Malcolm and the County Attorney's Office to be present at 11:30 a.m. We will have further discussion then.

Ms. Iseri-Carvalho: That would be fine. Thank you.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Now did you remove your second?

Mr. Kualii: Are you just going to recess this matter?

Chair Furfaro: I would like to recess this matter until 11:30 a.m.

Mr. Kualii: If it takes (inaudible).

Chair Furfaro: You can keep it. Very good. This Special Council Meeting is in recess until 11:30 a.m.

There being no objections the meeting recessed at 8:55 a.m.

The meeting reconvened at 11:41 a.m., and proceeded on its agenda item as follows:

Chair Furfaro: I would like to call back into order the Special Council Meeting notice and agenda which was posted for this morning at 8:30 a.m. I have asked for the Department of Personnel to be present for some clarity, so may I ask Malcolm if you could please come up.

There being no objections, the rules were suspended.

MALCOLM FERNANDEZ, DIRECTOR OF PERSONNEL SERVICES:  
Malcolm Fernandez, Director of Personnel Services.

Chair Furfaro: First of all, thank you very much for coming over at a specified time for this. I am seeking some clarity on what is a request for \$10,000.00, a request for \$10,000.00 that I may or may not believe is required after a series of questions that came up based on the Prosecuting Attorney requesting special counsel on something that was cleared through the Attorney General's Office that sat in on a Civil Service matter, and that deals with the vacancy and the unbelievable amount of time that it has taken to get to a point that we have a mutual understanding of a posting. Now, it has only been an item for a couple of weeks that has come to the Council's attention but it was my belief from an executive briefing that we were in a position that the Civil Service Commission in-

fact arrived at a decision that this position for ES-24 (sic) I guess was cleared for the purpose of filling a vacancy, that is my interpretation.

Mr. Fernandez: As of this morning we met with the Prosecutor's Office to discuss this and I think we have that resolved at this point, and have assured them that we will be going out and recruiting for the position as stated as position number 2801 as an SR-24 without any changes.

Chair Furfaro: Why, and I am glad to hear that, but why has it taken your office this long to post that vacancy?

Mr. Fernandez: Well I think it goes back a ways back until the incumbent left and at that point the Department decided to recruit, and at that point when it came to our office where approvals were needed to go online that I asked for a meeting with OPA and then we had subsequently a meeting. I informed them that as how I understood the ruling was at that time was that when the incumbent left the position that the position would be posted for as a SR-22 at that time, and it has gone back and forth...

Chair Furfaro: Can you explain for the people in attendance OPA.

Mr. Fernandez: Office of the Prosecuting Attorney.

Chair Furfaro: So you met with them and you thought you had an understanding, but as I read the order it was cleared. So what, under what authority did you think you needed to have this meeting?

Mr. Fernandez: I had understood from my counsel that when the position became vacant that the position would go down to an SR-22.

Chair Furfaro: Okay so that was an interpretation you got from counsel, but that in-fact as I interpret it was moot because Civil Service board approved the vacancy and the order that it was vacated for a new posting.

Mr. Fernandez: Well there was some confusion as to what the ruling was in our minds when we had reviewed it that is why. I think at this point we are clear as to what direction we want to go in and what we have committed to OPA.

Chair Furfaro: Well this is the direction I want to go as Chairman of the Council, I want to get a vacancy that was cleared in the budget for an SR-24, I want to get it cleared, I want an understanding that you are going to recruit for that position based on the understanding of the job requirements of the person that vacated that position, that there is some level of equal understanding that we can recruit this person. Am I hearing now we have that understanding?

Mr. Fernandez: Yes we do.

Chair Furfaro: Okay. We have that understanding because I do not want to be voting on something that now requires us to identify a line item for \$10,000.00 with special counsel to resolve something that should have been resolved nine (9) months ago as far as I am concerned. I am not a happy camper on

this that I have to bring all the parties to the table here at the Council, but it sounds like we have resolution.

Mr. Fernandez: Yes we do.

Chair Furfaro: Malcolm, I want to thank you very much for coming over on such a short notice. This, to me, clearly is the...the direction was given by the Civil Service Commission, end of story, that is how I see it. Thank you very much. Mr. Rapozo and then Mr. Bynum.

Mr. Rapozo: Thank you. Malcolm, this morning when we came into session we were informed that the job had been posted, is that true?

Mr. Fernandez: No, that is incorrect, the job is not posted.

Mr. Rapozo: And I want you to stop there because we were about to vote this morning to receive this item and kick it off because we were told by the County Attorneys through our Chair that the job had been posted, and I did check, and it is not posted. So that is a lie and I am terribly frustrated, not with you, Malcolm, and I apologize for you that has got to be the one that has got to hear my venting, but we were about ready to vote on a matter based on the information from a County Attorney that was false. Makes us all look bad, makes the Chair look really bad, because he came out defending that, and then we find out that is not even true.

Chair Furfaro: Well let us make sure we understand, I defended the email that I got after discussion. So this email is not factual?

Mr. Fernandez: That email actually says that it has been approved to proceed, but it is not actually posted at this point.

Mr. Rapozo: So what happened between this morning and now that has changed it? How am I to be assured that this position will be posted as it was submitted back in December or whenever it was?

Mr. Fernandez: This morning we met with OPA and had discussions with OPA, and also after discussions with OPA had discussions with my counsel, and from then we had said hey this is how we think we should be going.

Mr. Rapozo: I guess, how long does it take to post a position?

Mr. Fernandez: It is really coordinated with when we can put it in the papers.

Mr. Rapozo: In the what?

Mr. Fernandez: In the newspapers.

Mr. Rapozo: No, but do we not post it up online some place?

Mr. Fernandez: Yes, it is online and we coordinate it with when we can put it in the papers and online, so it is, we can do it instantaneously



online; however, we like to, because it is normal practice that we put it in the paper at the same time.

Mr. Rapozo: Well, Malcolm, I have faith in you, I do, I do not have confidence in the system. I am very disappointed right now with the untruthful information that I got this morning before a vote. Until that thing is posted, I am not prepared to receive this. I am just not, because I think what I heard from the Prosecutor this morning was that the position as it was submitted had been changed, that infact somebody, I do not know who is running the show across there whether it is the County Attorneys or you, but somebody changed the job duties of the position. I do not know, and we will get into that discussion later when we talk about the reallocations, but as far as this specific item that is on the agenda, is the intent from Personnel to post it as it was requested?

Mr. Fernandez: Exactly.

Mr. Rapozo: That is all I have for Malcolm, thank you.

Chair Furfaro: Mr. Rapozo, I want to be very careful here, when a communication comes over to the Chairman of the Legislative body and that says requisition approved, to view the details of this posting please go to the following site, there is a level of trust and understanding here that this is happening. I want to caution members from using the term lie, and I did not, but I am holding you responsible, Malcolm, if I get a communication like this that evidently was started in your Department from yesterday when I began discussion on this. I expect performance, I expect nothing less than performance. I have been in senior management for a very long time and for things like this to get communicated in a way that I am supposed to understand that certain things are happening and then there is no action taken really bothers me. It took nine (9) months for us to get to this point and this point has to be in front of the Council? I think this body has a lot of integrity, we have a very good independent group here, but is the action now settled as I asked the Prosecutor to have time with you this morning, is it settled?

Mr. Fernandez: It is settled.

Chair Furfaro: Is it being posted?

Mr. Fernandez: As soon as we can get it in coordination with putting it in the papers.

Chair Furfaro: How long will that take? Just roughly. A week?

Mr. Fernandez: About a week.

Chair Furfaro: Thank you very much. Vice Chair Yukimura.

Ms. Yukimura: Malcolm, the unanswered question for me is whether there is agreement on the job description. Let me ask you the question, is there agreement on the job description that is to be posted?

Mr. Fernandez: You know that question really goes back as to whether or not what the Commission looked at. They looked at as part of the

package in the appeal I would assume the job description which was a part of the package...

Chair Furfaro: May I just interrupt for a second?

Ms. Yukimura: Sure.

Chair Furfaro: Then you totally misunderstood my question to you, is everything resolved between the job posting and the Prosecutor's Office for which I delayed this meeting today? I sent them to meet with you. Is everything resolved?

Mr. Fernandez: Yes.

Chair Furfaro: Thank you.

Ms. Yukimura: Okay, so my understanding is that the Prosecutor has a job description she wants posted which she sent to you long ago, but that there are certain requirements that we follow, I presume it is a Civil Service position?

Mr. Fernandez: Yes.

Ms. Yukimura: That there are certain requirements that we follow that do not really allow any Department Head just to put their job description as the posting, that there are certain requirements that are followed, am I wrong here?

Mr. Fernandez: Yes there are, and the basic thing to remember is that the Civil Service Commission reviewed and made a decision. And the decision really is a part of the package was the position description in question.

Ms. Yukimura: Is it the position description that the Prosecutor wants to post?

Mr. Fernandez: That is the position description.

Ms. Yukimura: So there is no disagreement between what you can post as a Personnel Director following Civil Service Rules and what the Prosecutor wants to post?

Mr. Fernandez: I think the point here is really is that there was an appeal, the Commission ruled, and we are following the ruling of the Commission.

Ms. Yukimura: I am still not clear whether that is, that means that you post the job description that the Prosecutor has provided or whether...

Mr. Fernandez: That is the position that was ruled on and this is the position we will be posting.

Ms. Yukimura: Okay. Is that the same position description that the Prosecutor sent to you months ago that she was waving here today?

Mr. Fernandez: Yes, and you know, I have to correct and clarify the months ago issue. Months ago yes there was a hearing and an appeal but the vacancy actually occurred just this December.

Ms. Yukimura: I do not understand, help me make the connection.

Mr. Fernandez: The person who was in the position left in December, that is when the Prosecutor's Office initiated a process for replacement.

Ms. Yukimura: Okay. So you are saying it is three (3) months ago not a year ago?

Mr. Fernandez: Yes.

Ms. Yukimura: Okay. But coming back to my...

Chair Furfaro: I think he answered your question. What she submitted was infact what was posted.

Ms. Yukimura: Or...

Mr. Fernandez: It is going to be posted.

Chair Furfaro: It is going to be posted, but it was ruled on by the Civil Service group?

Mr. Fernandez: That is correct.

Ms. Yukimura: Okay, then maybe, I see the Prosecutor shaking her head, so I do not know, maybe we need to hear from her.

Chair Furfaro: I will call her up when I feel it is appropriate. So Malcolm, tell me the next steps here, where are we at?

Mr. Fernandez: It is just a question of coordinating with the papers when we can get the PO done and get it in the papers; at the same time we will put it on the NEO.GOV system.

Chair Furfaro: Is your Division required to send any acknowledgment to the Civil Service Commission based on the order they made?

Mr. Fernandez: Not at this point.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: How long does a reallocation take normally? If the Mayor asked to reallocate one (1) of the positions that we see quite often, how long does it take?

Mr. Fernandez: It depends how complex it is. Sometimes it is just a simple thing as PO-1 to PO-2 in the Police Department which is just a matter of switching the PD's.

Mr. Rapozo: So how long does that take? A day?

Mr. Fernandez: If there is nothing, then yes, it can take a day.

Mr. Rapozo: And an SR-20 to an SR-24 typically? Not this one, but in a normal scenario?

Mr. Fernandez: Well it depends again.

Mr. Rapozo: Average? Does it take three (3) months, four (4) months?

Mr. Fernandez: Depending how much we have in line. It can take a while depending on how many requests we have before a particular...

Mr. Rapozo: But as far as the, this took an extremely long amount of time.

Mr. Fernandez: Yes. Right.

Mr. Rapozo: And what was the basis for that? What was the red flag that the County Attorneys got involved? I am assuming the County Attorneys do not get involved with your reallocation requests, right? I cannot imagine why.

Mr. Fernandez: Well normally when there is an appeal that is what happens.

Mr. Rapozo: Okay. So because of the appeal...

Mr. Fernandez: And then it went to Commission, that is when they get involved.

Mr. Rapozo: So what caused the initial denial that generated the appeal?

Mr. Fernandez: Well we looked at, in our minds at that time...

Mr. Rapozo: And when you say "our" you are talking about the Personnel Department?

Mr. Fernandez: Right.

Mr. Rapozo: Not the Attorneys?

Mr. Fernandez: Not the Attorneys. In doing our review based on the information we got, we felt that it was not really at that level.

Mr. Rapozo: This is prior to the appeal?

Mr. Fernandez: Yes, prior to the appeal.

Mr. Rapozo: And then the appeal gets done, right, and so you get this order from the Civil Service Commission that says that position number whatever it is is reallocated to an SR-24, at that point what happens?

Mr. Fernandez: We make the changes as required by the order from the Commission.

Mr. Rapozo: Right, but the job was not posted.

Mr. Fernandez: It did not need to be posted at that time, the changes would be made on that particular appeal where that person's PC would be worked on and changed to reflect that change.

Mr. Rapozo: Okay, but I guess I am trying to figure out, I am trying to figure out the chain of events. So the Civil Service Commission rules that the position is now an SR-24 based on the position description and all the duties and so forth, now the Prosecutor's Office submits a request to post for that position because there is a vacancy, right, because the incumbent as you called it left, resigned, retired, whatever, so now there is a vacancy. So the Prosecutor's Office, and this could be applicable to any department, the Department Head sends over a request to post for this position, apparently that was denied and that was denied by the Personnel Department even though the appeal had already been done and the ruling was made by Civil Service. I guess I am asking on what basis was that denial.

Mr. Fernandez: I think we needed clarification because the ruling on the Civil Service Commission was kind of unusual in that at one (1) point it said at a certain date where we made the ruling that it stayed at what we recommended that SR-22, and at a future date, I think it was in July or so, it was changed to reflect an SR-24 at that point. That is where the area of what are you saying here because we are saying it is an SR-22, you somewhat agree with us by going along with the first date that we got, but then at a future date you say it is an SR-24.

Mr. Rapozo: I think the order was quite clear. So because of that that is when the Attorneys got involved and advised you not to post?

Mr. Fernandez: No, not to post, but that the adjustment would have been appropriate when that happened.

Chair Furfaro: Mr. Rapozo, I would like to yield the floor longer for you but I want to go back to a couple of facts that I have with the Council, if you understand. Although you ask in a different way, my question was under what authority did you not post this particular position, because this communication here, and this is the kind of pilikia I do not want in front of the Council, I will be very honest with you. I think you have a very professional group over there, but we are dealing with, this order comes through, this was my reference, this Finding of Fact and Conclusion goes back to a September 26 date, that is a long time ago. I was trying to find out when we got that piece under what authority did you choose not to post the Finding, that is all I wanted to know. Now we have, we seem to have resolution this morning, I got an email because I followed-up on this on a agenda item today because I pride myself with trying to do my homework, and basically, I was of the impression that the requisition was

approved, that to view the details of this requisition you need to go to this particular website, but this order came out in September. I want to get it resolved, it sounds like you have done that today. We do not have to look at identifying funding for special counsel to do this, and I am going to ask the Prosecutor to come up and make sure we are all on the same page. Vice Chair has a question for you, Malcolm.

Ms. Yukimura: Thank you. So I am little confused, you said the reallocation was actually in December, but the decision was in September?

Mr. Fernandez: No. No. The December issue really is when the incumbent left and the position became vacant.

Ms. Yukimura: So forgive me for not keeping all the facts straight, but when the reallocation request first came to you it was based on a person being in the position?

Mr. Fernandez: That is correct.

Ms. Yukimura: And so then there was a request to reallocate based on the work she was doing as being more than the position description she was assigned to?

Mr. Fernandez: That is correct.

Ms. Yukimura: Okay. And so it was denied by your office, and then appealed, and on the appeal, the Civil Service Commission held for the Prosecuting Office and ordered a reallocation of a warm body essentially, somebody that was in there?

Mr. Fernandez: That is correct.

Ms. Yukimura: Okay.

Chair Furfaro: You know I would really like to move on with this.

Ms. Yukimura: Okay but then the person left and then the Prosecuting Attorney wanted to post to hire?

Mr. Fernandez: That is correct.

Ms. Yukimura: And at that time asked you to post to hire based on a SR-24?

Mr. Fernandez: That is correct.

Chair Furfaro: Look, I do not want to re-create the wheel here based on everybody's interpretation. We got to the facts, the facts are September you got a Civil Service Finding, you are now going to comply with it, I am very embarrassed that we had to take this kind of time, this is not the kind of stuff I want in front of the Council. I would like to be spending a lot more time on things that...accelerating CIP projects, getting our nose deeper into the Budget, but we are not here to re-create the wheel, you are in agreement for this posting?

Mr. Fernandez:

That is correct.

Chair Furfaro:  
this Civil Service posting?

And you are in agreement of the outcome of

Mr. Fernandez:

Yes.

Chair Furfaro: Malcolm, I hated to be so direct with you about this, but I hope you understand this is not stuff we should be involved with at this level. You guys are highly professional across the street and you should be able to resolve it and have a clearer understanding. I would like to move on to bring the Prosecutor up. Malcolm, thank you.

Ms. Iseri-Carvalho:

Thank you, Council Chair.

Chair Furfaro: Before I give the narrative, I want to pose a couple of questions here: are you satisfied with the outcome of the posting for this position?

Ms. Iseri-Carvalho: I can tell you that when I first, we had gone over immediately after this meeting, when I left the Personnel Office the decision stood in opposition to what I had wanted. So apparently there was some discussion after I had left the office because that was not the conclusion that was provided to me.

Chair Furfaro: Do you feel after your discussion and what I have just heard from the Division Head at Personnel that they are going to post the appropriate job?

Ms. Iseri-Carvalho: I have no confidence in that occurring until it happens. I will believe it and see it when it happens.

Chair Furfaro:

Okay.

Ms. Iseri-Carvalho: I would like to provide more insight so there is not this confusion about the timing and about what had occurred. You are right, I do not want to spend the time here but I do not want to leave this discussion without having all of the members here clear on what the process...and I think we always look at and it is great to have a resolution at the end, but we need to address the processes, the process of how and why because I do not want to be here again on this same situation.

Chair Furfaro:

Okay. Understood.

Ms. Iseri-Carvalho:

So to save the time...

Chair Furfaro: I have heard from them, they are going to have a week to post, and I will be prepared to put another agenda item in a week if it is not posted, but I want to get this resolved. Let me give you a few minutes to give your overview and we will get to some Council business. You have the floor.

Ms. Iseri-Carvalho: Thank you. It is unfortunate because we had a lengthy discussion with Personnel. We spent hours in trying to avoid this matter from coming before the County Council, hours, and hours, and hours of my time, my

First Deputy's time, the Administrative Officer who was still present at the time, my Grants Coordinator who was expected to take on some of the duties of what the Administrative Officer had. We had all the personnel in there today, we had Tom, we had Malcolm, we had Kathy, I had spoken to Erin Doo, we had provided a lot of additional burden and that is because of the County Attorney's Office, that is why we are here. It is not because of Malcolm, it is because of the County Attorney's Office. As a matter of history, on December 3, 2009, so it has been three (3) years over, 3 ½ years when the first request was made for reallocation of this position of an SR-20 to an SR-24, over 3 ½ years. We did not get an answer despite numerous communications until April 28, 2011 that was over a 1 ½ years almost two (2) years later that we get a decision from Personnel. On May 17, 2011 the employee filed an appeal timely. On August 16, 2011 is when there was a hearing by the Civil Service Commission, the Personnel Department was represented by Marc Guyot who argued that the position 2801 should not be an SR-24, the appellant did not have an attorney – she represented herself. We provided testimony on behalf of the job descriptions, but the Prosecutor's Office does not have standing before a Civil Service Commission; it is the appellant or one who is aggrieved by the process. On September 26, 2011 the Civil Service Commission filed its Findings of Fact, Conclusions of Law and Decisions and Order; it is an order, it is the decision, it has the effect of law. At that time they determined the SR-20 should be reallocated to SR-24 retroactively to July 1, 2010 and thereon. There were discussions between the County Attorney's Office as well as the Department of Personnel Services regarding the effect of the decision, because the County Attorney's Office had an opportunity to appeal that decision, they had an opportunity to file a Motion for Reconsideration if they disagreed with that opinion or felt that they were in the right because...and they chose to not do that. And then it became moot that the decision is the decision of law, the County Attorney's Office knows that it is a decision of law. I was very disturbed when I learned that there were discussions between the County Attorney's Office and the Department of Personnel stating that when, this was before the employee even left, they stated that they were not going to post already before Cyndie even left. Then when the position came back there was a purposeful deliberate decision by the County Attorney's Office informing their client the Department of Personnel Services to not post the decision as made by the Civil Service Commission, that was stated to me in my meeting when I attended with Malcolm, Tom, Kathy, my First Deputy was present, as well as Jamie, and myself, that they were purposely told that...this was before she even left, this was after the decision came out when they were discussing potential for appeal that Cyndie had not even left but when she does and if she does, because I did not even know Cyndie was going to leave. I did not learn until Thanksgiving weekend when there was an incident she had to move back to the mainland to take care of her ailing ninety-one (91) year old mother-in-law. So I had not even learned that, but there were discussions already by the Personnel Office and the County Attorneys to subvert the decision made by the Civil Service Commission, and they already knew when my position came up that they were going to withhold the decision made by the Civil Service Commission and post it as an SR-22. That had already been made before the position became vacant, and so when they came up they deviated from their normal policies and procedures which is to post the position, they contacted the County Attorney's Office and were informed by the County Attorney's Office that they will not post unless I agree to an SR-22. I said we will not be agreeing to that because that would be in clear violation of the law, and so they purposely were advising their client to violate the law, to not post or to not follow the decision of a Civil Service Commission in an appellate hearing. That disturbs me and all of that information was discussed back and forth between Personnel because this was not the arena that I wanted to come forward, because they had the option to appeal if



they disagreed with the Civil Service Commission and infact knew that, decided they were not going to take that option, and yet have their cake and eat it too and come back and not post the position. That is offensive, that is disgusting, that appalls my conscience, to learn that kind of information and that I have to go through and the community has to suffer because of this which appears to be a personal vendetta to not post or to not follow Commission authority.

Chair Furfaro: Okay and Shay, I want to say at this point I want to caution all of us when we get to a conclusion here which I think we have today. So we will all take a moment, I know you feel that there have been some inadequacies there, we will take a deep breath, and I will let you continue here. But please, I am trying to get to a resolution here.

Ms. Iseri-Carvalho: I would want to go, and again...

Mr. Rapozo: (Inaudible) it is really on a date, I just want to know, you said that you had discussions with the Personnel people was that...

Ms. Iseri-Carvalho: Just now, just at 8:00 a.m. when I went there to find out...

Chair Furfaro: After I broke the meeting and instructed...

Ms. Iseri-Carvalho: We had a meeting...

Mr. Rapozo: You had mentioned several meetings, I just wanted to know if it was the meeting that you had yesterday.

Ms. Iseri-Carvalho: No. At the meeting of January 27, because what happened on September 26 after the findings had occurred, we requested for posting on December on or about December 15. We did not get any response from Personnel. Numerous communications as to why this is not posted. We finally get a response the week of January 27 stating that they were not going to post our position and that they could not tell us the reason over the phone, that we needed to meet with them in person. I was on O'ahu on January 27, I said I did not want to put this any further, that he can meet with my First Deputy. It is at that meeting they said that they received an opinion from the County Attorney's Office that they are not to post the position in accordance with the rules that in accordance with the decision that was made by the Civil Service Commission. Subsequent to that is when I had engaged in discussions to try to resolve this issue to of course no satisfaction, and it was not satisfied even after I had left that meeting at 10:30 a.m., so there must have been some form of communication that occurred subsequent to that meeting. But I do want to remind the community and this Council that we have a duty to overlook this kinds of actions; when we look at Hawai'i Revised Statutes Section 76.1 it clearly outlines the purpose of the Civil Service Commission. It is the purpose of this Chapter to build a career service in government free from political influences to render impartial service to the public at all times according to the dictates of ethics and morality and in compliance with all laws. Clearly when I look at this purpose it has been violated by the County Attorney's Office. This is based upon all of the information, all of the discussions we have had, and by an attorney that had been ruled upon as an adverse party in an appellate hearing. It is shocking in any event. What I do want to say is that I learned just as quickly as you did, Council Chair, that there was a decision a minute or so before Malcolm came up, he said he received a call and was told to go

and post it as requested. This should not have taken all of my time nor your time, but I do not want this to happen again, and we will be filing stuff against the County Attorney's Office for this deliberate action, because this is just shocking and unbelievable to me what has happened to our office and what has happened, and the community has suffered because of these kinds of actions that are deceitful, and deliberate, and purposeful, that purposely goes against the values of the Civil Service Commission was instituted to be.

Chair Furfaro: I would like to leave it at that right at this moment. I want to call Malcolm back up if I could.

Ms. Iseri-Carvalho: Thank you.

Chair Furfaro: Thank you. Malcolm, thank you again and if you could introduce yourself.

MALCOLM FERNANDEZ, DIRECTOR OF PERSONNEL SERVICES.

Chair Furfaro: Malcolm, you might have heard me earlier and I plan to ask for a receipt of this communication. Is it fair and reasonable that you would be able to get some kind of confirmation for me or receipt from the media on the posting of this job within the next seven (7) days?

Mr. Fernandez: Yes.

Chair Furfaro: My intention is as we have to post business for next week, we have to post it tomorrow by 4:30 p.m., I am going to be asking you if you can contact me directly, Malcolm.

Mr. Fernandez: Okay.

Chair Furfaro: And let me know that you have a confirmation on that. I do not want to have anymore dialog on this item, members, we want to get it resolved. I think we have had issues over here that concern me whether we take up the terminology of someone's lieing or the Office of Disciplinary Counsel will be advised and so forth. The agenda item infront of us is to get this resolved based on the Facts of Finding that came down to us from Civil Service, so please make contact with me. Thank you, Malcolm.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: I would like on that note to take a break for lunch here. I think this has a potential of coming back to our agenda in a week, but let us see if we get the posting. May I have a motion to receive this item.

Mr. Rapozo: The motion is already on the floor and it is to approve. Can we have some discussion, Mr. Chair?

Chair Furfaro: Yes we can have some discussion but I will be asking you and Mr. Kualii to be removing your motions.

Mr. Rapozo: With all due respect, Mr. Chair, I cannot do that. What I just heard was quite disturbing and I plan on pursuing in some fashion

as well, I am not going to...I think we heard about how reallocations take place. I think this was one (1) that was treated differently.

Chair Furfaro: Then it needs a different posting, because if it is a problem within the system, we have to fix it.

Mr. Rapozo: No. No. I want to see the resolution just as you, Mr. Chair. I want that to happen but I am not comfortable and confident that it will. I think the proper motion will be to defer. I am going to ask to call for the question on the motion to approve, because I think...because we approve the funds it does not mean that it has to be expended. If resolution is received, they do not have to spend the money. I do not think delaying it another week as well is the right thing to do, but obviously if I cannot get the five (5) votes to approve the funds, I would entertain a motion to defer. We have a full Council meeting next week, but I believe at this stage in the game with what we have just heard, I think special counsel is in order. I think the County Attorney's Office is definitely in no capacity at this point to even represent the Prosecutor's Office in any type of actions for this position to be posted. We deal with reallocations all the time, and it bothers me that this one (1) is taking so long and such an important position for that office. Again I am not going to be withdrawing my motion, I am hoping we can get the five (5) votes, if not, the next best thing would be a deferral to next week and hopefully resolution is made. You have heard the Personnel Director say reallocations can take up to... I mean it can be as quick as a day, a day. We already heard from the Personnel Director here on the record that he has no problem posting the job as it was requested back in December. So to say we need to wait one (1) more week, I do not buy that, I do not think...but that is his call, I am not...

Chair Furfaro: I want to make sure you understand, the week I am talking about is to get a confirmation that the job was posted according to Iseri-Carvalho's request. I am tentatively going to put it on the agenda because as Malcolm has pledged to me, as soon as he hits media print he is going to let me know, and we would move to receive that item. I am sorry, Shay, we are in discussion now.

Mr. Rapozo: Mr. Chair. Just so that we are all clear, we were advised this morning that the job had been posted.

Chair Furfaro: Absolutely.

Mr. Rapozo: The fact that Malcolm says he is going to post it, until I see it, it is going to be very difficult for me to...I think the special counsel is the right way to go and I would hope we can get the votes to support that.

Chair Furfaro: Okay and just in all fairness, I was part of that discussion that this posting was given. I wanted to see a copy. It was brought over in a form of an email, and so to keep it real simple right now, I have a disappointment in getting information. I am an officer of the County, and if I do not get the information that I request and it is not bonafide, if I can say, then I got a real problem with that, and I will take it up somewhere else on another process. Councilmember Nakamura.

Councilmember Nakamura moved to defer item C 2012-101, seconded by Councilmember Kualii, and carried by a 5-2 vote (Councilmembers Rapozo and Yukimura voting no).

Chair Furfaro: Thank you. That is concluding our business for now and we will be back at 1:30 p.m.

The meeting recessed at 12:23 p.m., reconvened at 1:41 p.m. and proceeded as follows:

Chair Furfaro: So members, I would like to close the business on the Special Council Meeting that we recently had deferred the item to next week.

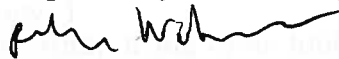
**EXECUTIVE SESSION:**

ES-534 Pursuant to HRS sections 92-4, 92-5(a)(4), and section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney, at the request of Council, requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel to represent the Office of the Prosecuting Attorney before the Civil Service Commission, relating to the classification of an employee and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

**ADJOURNMENT:**

By unanimous consent, the meeting was adjourned at 1:41 p.m.

Respectfully submitted,



RICKY WATANABE  
County Clerk

/il